



Department of the Treasury  
Internal Revenue Service  
P.O. Box 2508  
Cincinnati, OH 45201

Number: **201701019**  
Release Date: 1/6/2017

Date: October 13, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.06-00, 501.06-01

Dear \_\_\_\_\_ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(6) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Jeffrey I. Cooper  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034, *Proposed Adverse Determination under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*



**Department of the Treasury**  
**Internal Revenue Service**  
P.O. Box 2508  
Cincinnati, OH 45201

**Date:** August 23, 2016

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

T = State

U = Date

V = Date

x dollars = Amount

**UIL:**

501.06-00

501.06-01

Dear \_\_\_\_\_ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(6) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

**Issues**

Do you qualify for exemption under section 501(c)(6) of the Code? No, for the reasons stated below.

**Facts**

You formed as an unincorporated association. You submitted a Declaration of Covenants, Conditions, and Restrictions Establishing a Plan of Condominium Ownership that was recorded with the State of T on U. The Declaration states that the Declarant is the owner of real property located in T and "Declarant declares that the real property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to the following liens and charges, all of which are declared and agreed to be in furtherance of a plan of condominium ownership as described in \_\_\_\_\_ Civil Code Sections 1350-1360 for the subdivision, improvement, protection, maintenance and sale of condominiums within the real property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining, and protecting the value and attractiveness of the real property. All of the limitations, restrictions, easements, covenants, conditions, liens, and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title, or interest in the real property, and shall be binding on and inure to the benefit of the successors in interest of such parties."

Section 2.1 of the Declaration explains that the ownership of each condominium in the development includes the unit, the respective undivided interest in the common area, a membership in the association, and any exclusive or non-exclusive easements appurtenant to such unit over the common area. Section 2.2 of the Declaration explains that each condo owner has a non-exclusive easement of use and enjoyment in the common area and for ingress and egress. Section 2.2.1 indicates that the association has the right to limit the number for guests and adopt rules and regulations to regulate the use of the common space. Section 3 explains that the

condominium units shall be used for residential purposes only and not commercial use. Section 4.1 explains the formation of the unincorporated association and states that, "On the close and recording of the first condominium sale to an owner, the Association shall be charged with the duties and invested powers set forth in the Articles, Bylaws, and Declaration, including, but not limited to, control and maintenance of the Common Area and any Common Area facilities. Section 4.3.2 describes some of the duties of the association including the operation and maintenance of the common area, the payment of all real and personal property taxes and assessments and any other taxes levied against the common area, personal property owned by the association, or the association itself, water and utilities for the common areas and the condominiums when the condominiums are not separately billed, insurance, and enforcement of restrictions and rules.

Section 5.1.1 of the Declaration details the qualifications for membership. This section states, "Each owner of a condominium, including Declarant, shall be a member of the Association and shall hold one membership interest in the Association for each condominium owned." Each owner remains a member until his/her ownership interest ceases. Section 6 provides information about assessments to members and indicates that by acceptance of a deed, each condominium purchaser agrees to pay regular assessments to the association for each condominium owned.

You submitted an Amendment to the Declaration and Articles of Association that was dated V. The amendment clarifies the exclusive easements over the common area apparent to each unit that each owner shall clean and maintain.

You stated in your application that you are a homeowners association that collects HOA fees from four units at the beginning of each month. The monthly assessment is x dollars per unit. Your revenue is solely from these assessments and the occasional late fee. Your expenses include HOA insurance, common area utilities, repair, maintenance, gardening and cleaning, water, trash, and stamps. You also have an Owner's Capital account.

### **Law**

Section 501(c)(6) of the Internal Revenue Code of 1986 provides exemption from federal income tax for business leagues not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(6)-1 states that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization, whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Revenue Ruling 59-234, 1959-2 C.B. 149, held that a real-estate board whose primary purpose or activity is the operation of a multiple-listing system is considered to be rendering particular services for its members as a convenience and economy in the conduct of their respective businesses, rather than for the improvement of business within the real estate business generally, and is not exempt from Federal income tax as an organization described in section 501(c)(6) of the Code. The ruling further concluded that the operation of a real estate multiple listing service constitutes a business of a kind ordinarily carried on for profit.

Rev. Rul. 68-264, 1968-1 C.B. 264, held a nonprofit organization is not exempt from federal income tax under section 501(c)(6) of the Code because it operates a traffic bureau for members and nonmembers as its primary activity. Primary activities that constitute a regular business of a kind ordinarily carried on for profit will preclude exemption from federal income tax under section 501(c)(6) of the Code because they evidence a purpose to engage in such business.

In Apartment Operations Ass'n v. Commissioner of Internal Revenue, 136 F. 2d 435 (1943), the court determined that the organization was not exempt from tax as a business league. The organization was made up of apartment owners. It did not meet the description of a business league because it regularly carried on business of a kind ordinarily conducted for profit. It performed particular services for individual persons such as the furnishing of credit information, the supplying of an apartment shopping service, the making of arrangements for direct purchases by members at discount, and similar activities.

In Indiana Retail Hardware Assn., Inc. v. United States, 366 F. 2d 998 (1966), the Court held that when conducting particular services for members is a substantial activity of an organization, the organization will be precluded from exemption under section 501(c)(6) of the Code. Over 58% of the organization's total income was derived from its performing particular services for individuals as convenience and economy in their businesses and from its other income-producing activities.

#### **Application of law**

Section 501(c)(6) of the Code provides exemption when no part of the net earnings inures to the benefit of any private shareholder or individual. Your Declaration of Covenants, Conditions, and Restrictions Establishing a Plan of Condominium Ownership specifically states that your activities will inure to the benefit of individuals. It states, "All of the limitations, restrictions, easements, covenants, conditions, liens, and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title, or interest in the real property, and shall be binding on and inure to the benefit of the successors in interest of such parties." Since you operate for the sole and exclusive benefit of your membership your net earnings inure to those individuals and you do not qualify for exemption under section 501(c)(6) of the Code.

Contrary to Treas. Reg. Section 1.501(c)(6)-1, you are not an association of persons with a common business interest; rather, you are an association of condominium owners whose common interest is providing for the maintenance and upkeep for your common area. Your expenses for the common area include utilities, repair, maintenance, gardening and cleaning, water, and trash. Other than the fact that all of your members own a condominium on common grounds, your members have no common business interest. Therefore you are not a business league as described in section 501(c)(6) of the Code.

Rev. Ruls. 59-234 and 68-274 provide that activities that constitute the performance of particular services for individual persons may preclude exemption from federal income tax under section 501(c)(6) of the Code. Any activity that serves as a convenience or economy to members is a particular service. Like the organizations in Rev. Ruls. 59-234 and 68-274, all of your activities are directed toward providing services to members. Maintaining the common area of a condominium complex is a convenience to the owners. If not for you, the individual owners would have to perform this duty.

Like the organizations described in Apartment Operations Ass'n v. Commissioner of Internal Revenue and Indiana Retail Hardware Assn., Inc. v. United States, your activities do not improve the business conditions

of one or more lines of business or business conditions of any community as a whole. Instead, you serve the special interests of your individual members.

### **Conclusion**

You are not an association of persons promoting one or more lines of business, and your activities constitute specific services to members. Accordingly, you do not qualify for exemption from federal income tax under section 501(c)(6) of the Code.

### **If you don't agree**

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

**For an officer, director, trustee, or other official who is authorized to sign for the organization:**

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

**For authorized representatives:**

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

**Where to send your protest**

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

**If you agree**

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at [www.irs.gov/formspubs](http://www.irs.gov/formspubs). If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Jeffrey I. Cooper  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure:  
Publication 892